APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NO. 882-70

THE STATE OF GEORGIA, ET AL., PLAINTIFFS

v.

THE NATIONAL DEMOCRATIC PARTY, ET AL.,

DEFENDANTS

Decided November 24, 1970

MEMORANDUM AND ORDER

Plaintiffs in this action are seeking injunctive relief and a declaration by this Court that the Fourteenth Amendment requires that delegates to the national conventions of the Republican and Democratic political parties be allocated among the various states strictly on the basis of population.

A political party is in its essence based upon the constitutional rights of citizens embraced in the freedoms of assembly, speech and press which assure that citizens be free to organize themselves to engage in political discussion and activity. See, 29 C.J.S. Elections § 84, Political Parties. While it is recognized that, when necessary to prevent unreasonable abuses, courts are competent to evolve new doctrines in the realm of the "internal affairs" of voluntary associations, it appears that the procedures adopted by the defendant political parties and

attacked herein are responsive and reasonable under the prevailing circumstances. The allocation formulae adopted by the Republican and Democratic national conventions are employed to further their legitimate purposes and are neither arbitrary, capricious nor violative of any right guaranteed under the Fourteenth Amendment.

In *Powell v. McCormack*, 295 U.S. 486 (1969), the Court stated that justiciability encompasses two important considerations: first, the courts must determine whether the issue constitutes a political question and second, the courts must find that the claim presented and the relief sought admit of judicial relief. This Court finds that the claim in this action does not admit to judicial relief as there are no "judicially discoverable and manageable standards" by which to frame appropriate relief. *Maxey et al v. Washington State Democratic Committee, et al.* (No. 7838, D.C.W.D.Wash., October 26, 1970), cited by plaintiffs, turned, in material respects, on a statutory commitment of the State of Washington to the popular election of delegates to the national conventions. No such state statute is involved in the present case.

Accordingly, it is by the Court this 24th day of November 1970

ORDERED that plaintiffs' motion for preliminary injunction and summary judgment be and it is hereby denied, and it is further

ORDERED that defendant Carl L. Shipley's motion for summary judgement is treated as a motion to dismiss and it is hereby granted, and it is further

ORDERED that the motion of defendants National

Democratic Party, National Democratic Committee, Channing E. Phillips and Miss Flaxie Pinkett to dismiss be and it is hereby granted, and it is further

ORDERED that the motion of defendants Republican National Committee and Mrs. J. Willard Marriott to dismiss be and it is hereby granted, and it is further

ORDERED that the motion of defendant National Republican Party to quash services of process be and it is hereby granted.

/s/ JOHN LEWIS SMITH, JR.

United States District Judge

UNITED STATES COURT OF APPEALS

NO. 71-1018

THE STATE OF GEORGIA, ET AL., APPELLANTS

v.

THE NATIONAL DEMOCRATIC PARTY, ET AL.

Appeal from the United States District Court for the District of Columbia

Decided July 23, 1971

Before McGOWAN, TAMM and ROBB, *Circuit Judges.*

PER CURIAM: Appellants here urge that the constitutional principles enunciated in the Supreme Court's reapportionment cases, beginning with *Baker v. Carr*, 369 U.S. 186 (1962) and extending through the cases decided during the October, 1970 Term,[1] should be pro-

[1]Abate v. Mundt, 39 U.S.L.W. 4663 (June 7, 1971); Whitcomb v. Chavis, 39 U.S.L.W. 4666 (June 7, 1971); Gordon v. Lance, 39 U.S.L.W. 4719 (June 7, 1971).

jected by this court into the arena of national party politics. It is argued that the Court's precedents over the last decade compel the conclusion that the delegate-allocation formulas, utilized by both of the major national political parties to determine the quantum of representation of the various state parties at the 1972 Republican and Democratic National Conventions, are incompatible with the Equal Protection Clause of the Fourteenth Amendment. Thus it is said that the Republican and Democratic Conventions must be reapportioned so that each delegate will represent a segment of the national population as nearly equal as is mathematically possible.

Such contentions raise, first, difficult preliminary issues of state action and justiciability bearing upon our power to adjudicate the merits of the complaint; and, second, questions respecting the range of legitimate considerations open to political parties in determining the make-up of their conventions to select Presidential and Vice Presidential nominees. Resolution of the case before us is possible, however, short of definitive identification and prescription of such considerations. The several reasons for our disposition of the single claim presently pressed upon us are set out hereinafter.

I

Appellants include the State of Georgia, its Secretary of State, and State Election Board, as well as individual Georgia residents claiming to represent all similarly situated registered voters in that State. Appellees are the National Democratic Party, the Democratic National Committee, the Democratic committeeman and committeewoman for the District of Columbia, and the counter-

parts of these entities and individuals on the Republican side.[2]

On March 25, 1970, appellants filed a complaint in the District Court seeking declaratory and injunctive relief on the ground that the National Conventions of both parties are "malapportioned," and that only a delegate-allocation formula premised solely on population differences between the states could be squared with the Fourteenth Amendment. The case was heard on cross-motions for summary judgment and motions to dismiss filed by several of the appellees. By Memorandum and Order dated November 24, 1970, the District Court ruled in appellees' favor, holding both that the issue raised was nonjusticiable and that, on the merits, the allocation formulas did not work invidious discriminations contravening applicable constitutional standards. On appeal to this court, in view of the obvious necessity to resolve, as far as possible, the challenge of the complaint in advance of

[2]One of the subsidiary issues in this case is whether the National Republican Party was properly named and served as a defendant in the District Court. Other Republican defendants below filed a motion to quash service of process or to dismiss the complaint against the "Party" on two grounds. First, they contend that there simply is no unincorporated association known as the National Republican Party. According to their representations, the Republican aggregate is composed only of *State* Republican Parties, which act in concert during the Convention to conduct national party business. Between the quadrennial conventions the national affairs of the Republican National Convention are handled by the Republican National Committee. Appellants, however, introduced substantial evidence to the contrary in the form of the Party's rules and by-laws, membership solicitation forms taken from the Party's magazine, a 1969 Party Membership Card, and, among other items, a cancelled check made payable to the Republican Party. We find such evidence persuasive.

Second, the Republican appellees contend that, if the Party did exist, service upon it was nonetheless improper. Rule 4(d)(3) of

delegate selections at the state level in preparation for the impending 1972 Conventions, we established an expedited briefing and hearing schedule for the case.

Prior to oral argument, the plaintiffs in another action then currently being filed in the District Court, *Bode, et al. v. National Democratic Party, et al.*, No. 540-71, filed a motion to intervene or in the alternative to participate as *amici curiae*. Although the motion to intervene at this stage was denied, in view of the similarity of several issues raised in both cases we granted the request to participate as *amici curiae* to the extent of filing a brief. While *Bode*, like this case, represents a challenge to an existing delegate-apportionment formula, it differs in at least two important respects. First, the suit by the *Bode* plaintiffs, who are Democratic Party members in California, New York, Connecticut, and the District of Columbia, attacks only the constitution of their own Party's Convention. Second, the allocation principle urged by the *Bode* plaintiffs—characterized throughout as "one Democrat, one vote"—is substantially different from appellants' formula founded solely upon population.

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the Federal Rules of Civil Procedure states that service upon an unincorporated association may be made by "delivering a copy of the summons and of the complaint to an officer, or a managing or general agent" of the association. Service was made here on an employee of the National Committee at its Washington, D. C. office; and, while the Committee protests that the employee was not one of its own "officers" or "managing or general agents," it does not challenge the sufficiency of service on itself. Nor do we understand the Committee to argue that, if there is a National Party, the Committee is not its managing or general agent. Based upon these two concessions we find both that service on the Party was properly effected by the unquestioned service on the National Committee in its agency capacity, and that the trial court erred in granting the motion to dismiss. In view of the disposition we make in this case, error in this respect does not necessitate reversal.

While the *State of Georgia* case was under submission in this court, plaintiffs in *Bode* obtained a favorable ruling in the District Court on June 22, 1971. An appeal from that decision has now been docketed by the Democratic Party defendants, and that appeal is also receiving expedited handling in this court. That case is not before us at the present time and we, of course, express no view as to its merits.

II

We are confronted at the outset with the task of deciding whether "state action" within the intendment of the Fourteenth Amendment can be found in the delegate-allocation determinations challenged here. Such a finding is a necessary prerequisite to invoking the Equal Protection Clause. While this limiting concept has been defined with increasing liberality in recent years,[3] the issue is not without difficulty where, as here, the activity allegedly violative of the Constitution has been historically viewed as a purely private political matter.

Initially, it may be helpful to place clearly in context the level at which state action must be found in this case. We are not concerned here with the question of *how* convention delegates are chosen by the various states. Our problem is one step removed. It is: On what basis may the national political parties determine *how many* delegates are to be allotted to each state political party?

In the Republican Party the delegates to the 1968 Convention participated directly in the decision establishing

[3] *See, e.g.*, Black, *The Supreme Court—Foreword*, 81 HARV. L. REV. 69, 95-100 (1967); Silard, *A Constitutional Forecast: Demise of the "State Action" Limit on the Equal Protection Guarantee*, 66 COLUM. L. REV. 855 (1966); Williams, *The Twilight of State Action*, 41 TEXAS L. REV. 347 (1963).

the allocation formula to be applied for the 1972 Convention. The plan was submitted to, and approved by, the Convention delegates during the Convention. In the Democratic Party, on the other hand, the responsibility was delegated to the Party's National Committee. A special Rules Commission—known as the "O'Hara Commission"—was established at the 1968 Convention and directed to study the methods and criteria used by the Democratic Party in allocating delegates to the states and to suggest reforms. Upon the completion of its study a report was submitted to the National Committee. That body, after considering the Commission report as well as the recommendations of its own Executive Committee, announced the formula to be employed in 1972.[4]

With this brief sketch of the Parties' procedural methods for creating their apportionment formulas in mind, the thrust of appellants' primary line of reasoning on the state action question becomes apparent. The three-step analysis is developed in the following manner. First, it is argued, the Supreme Court has consistently found state action in the activities of state political parties insofar as those activities touch upon the machinery whereby *candidates* are nominated by the parties to seek election to local or national office. This is the clear force of the *Texas White Primary Cases*;[5] and, as those cases and others demonstrate, it makes no difference for pur-

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[4]Both allocation schemes give weight to such factors as each State's Electoral College strength, which is partially a function of population, and to prior performance, *i.e.*, the extent to which any State Party has provided support for the Party's candidates in the general elections of the recent past. Consideration of the details of these apportionment formulas is not necessary in resolving this preliminary issue.

[5]Nixon v. Condon, 286 U.S. 73 (1932); Smith v. Allwright, 321 U.S. 649 (1944); Terry v. Adams, 345 U.S. 461 (1953).

poses of finding state action that the state party acts through a statewide party primary, a state party convention, or a state party committee.[6]

Second, logic dictates that a state party's action in selecting *delegates* to its national convention is also invested with state action since the delegates' primary function is the nomination of candidates for the nation's highest offices. While the few courts that have passed on the precise question—whether the state's *delegate*-selection processes are imbued with the same quality of state action found in *candidate*-nomination processes—are divided,[7] we find ourselves in substantial agreement with the conclusion of the District Court in *Maxey v. Washington State Democratic Comm., supra* note 7, 319 F.Supp. at 678, that the analogy to the *candidate*-nomination cases is a close and compelling one.

Finally, if the action of the individual state parties in selecting delegates to participate in the presidential-nom-

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[6] *See, e.g.,* United States v. Classic, 313 U.S. 299 (1941) (party primary); Gray v. Sanders, 372 U.S. 368, 374-75 (1963) (party primary); Smith v. Allwright, 321 U.S. 649 (1944) (state convention); Nixon v. Condon, 286 U.S. 73 (1932) (state committee).

[7] *Compare* Maxey v. Washington State Democratic Comm., 319 F.Supp. 673 (W.D. Wash. 1970), *appeal docketed,* No. 71-1051 (9th Cir., Jan. 12, 1971) (state action found), *with* Irish v. Democratic-Farmer-Labor Party, 287 F.Supp. 794, 802-03 (D. Minn.) (state action discussed but resolution found unnecessary), *aff'd,* 399 F.2d 119 (8th Cir. 1968), *and* Lynch v. Torquato, 343 F.2d 370 (3d Cir. 1965) (no state action in party's *internal* affairs; candidate-nomination question left open), *and* Smith v. State Exec. Comm., 288 F.Supp. 371, 374 (N.D. Ga. 1968) (no state action found). *See generally* Note, *One Man, One Vote and Selection of Delegates to National Nominating Conventions,* 371 U. CHI. L. REV. 536, 538-45 (1970); Note, *Constitutional Safeguards in the Selection of Delegates to Presidential Nominating Conventions,* 78 YALE L.J. 1228, 1232-35 (1969).

inating process constitutes state action, the collective activity of all the states' delegates at the national convention can be no less readily classified as state action. Since the promulgation of each party's delegate-allocation formula for the next national convention is, as we have indicated, either the direct collective act of the state parties (Republican procedure) or is the responsibility of a body designated by the state parties (Democratic procedure), the precise national party decisions challenged in this case were, in reality, the decisions of the states acting in concert. Those acts are, therefore, not immune from constitutional scrutiny.[8]

Supreme Court cases also suggest a second, related but more generalized, basis for finding state action. The states are responsible for conducting the general elections which determine both the selection of State Electors and, with rare exceptions, how they will vote in the Electoral College. U.S. Const. art. I, § 2; amend. XII. As is the case with regard to the election of members of Congress, the major parties' nomination procedures play such an important role in the presidential selection process that they can fairly be said to be "integrally related" to the subsequent general elections.[9] The electorate's choice in the general election is effectively restricted to the nominees of the two parties. By placing the nominees' names on the ballot, the states, in effect, have adopted this narrowing process as a necessary adjunct of their election procedures. Therefore, every step in the nominating process—especially the crucial determina-

[8] For a discussion of this state action rationale see, Note, *Regulation of Political Parties: Vote Dilution in the Presidential Nomination Procedure*, 54 IOWA L. REV. 471, 476-77 (1968).

[9] *See, e.g.*, United States v. Classic, 313 U.S. 299, 314 (1941); Terry v. Adams, 345 U.S. 461, 469 (1953); Gray v. Sanders, 372 U.S. 368, 380 (1963).

tion of how many delegate votes each state party is to be allotted—is as much a product of state action as if the states themselves were collectively to conduct such preliminary conventions.[10]

The Supreme Court decisions on which this theory relies, finding state action in the conduct of state primaries because of the integral relationship between primary and general elections (*see* note 9 *supra*), arose in one-party states where nomination was indeed tantamount to election. We are unable to perceive, however, how that difference alone can be said to dilute the pertinency of those cases to the situation we now confront. National Convention nominating procedures effectively restrict the electorate to two choices rather than one. Mr. Justice Pitney's commentary on the realities of the American political process in his frequently quoted concurrence in *Newberry v. United States*, 256 U.S. 232, 285-86 (1921), has lost none of its relevancy over the last half decade:

> "[I]t seems to me too clear for discussion that primary elections and the nominating conventions are . . . closely related to the final elections . . . . So strong with the great majority of voters are party associations, so potent the party slogan, so effective the party organization, that the likelihood of a candidate succeeding in an election without a party nomination is practically negligible. As a result, every voter comes to the polls on the day of the general election confined in his choice to those few candidates who have received party nominations . . . . As a practical matter, the ultimate choice of the mass of voters is predetermined when the nominations have been made."

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[10]The "integral relation" rationale is discussed in Note, 37 U. CHI. L. REV. at 542-44, *supra*, note 7.

The state action question is not an easy one in view of the widespread assumption that party delegate-allocation decisions are matters entirely within the private domain. Nonetheless, in the absence of further explication by the Supreme Court on this point, we incline to the conclusion that the National Conventions are not so divorced from the activities of the states in conducting presidential elections as to negate the existence of state action.

III

Of course, state action is not in itself a sufficient basis on which to premise the grant of affirmative relief sought by appellants. We must stay our hand, as did the District Court, unless we are able to conclude that the issues raised, in addition to satisfying state action requirements, are justiciable. Justiciability, in the context of this case, raises the troublesome question whether judicial scrutiny of the National Democratic and Republican Parties' internal decisionmaking processes—processes through which delegate seats to their respective Conventions are apportioned among the state parties—requires the courts to "enter upon policy determinations for which judicially manageable standards are lacking." *Baker v. Carr*, 369 U.S. 186, 226 (1962).[11]

Appellees urge that no such standards exist. They claim that judicial intervention in this sensitive area would not only bar the national parties from balancing what they consider to be the multiple legitimate factors in formulating an appropriate delegate-allocation scheme, but would also place them in a strait jacket regarding

[11]We deal here only with the standards aspect of the justiciability doctrine since we apprehend no serious questions with respect to the political question-separation of powers elements. *See* Powell v. McCormack, 395 U.S. 486, 518-49 (1969).

party representation—a consequence which would be severely inimical to their future vitality. These fears, as we understand them, read too much into the justiciability doctrine. Appellees appear to treat as one and the same the finding that judicially manageable standards do exist, on the one hand, and the conclusion, on the other, that mathematical equality is the sole permissible criterion in distributing Convention seats among the states. Such is neither the clear teaching of *Baker v. Carr* nor the consequence of applying the Equal Protection Clause as developed in the other reapportionment cases.

Baker v. Carr, on this score, held only that

> "[j]udicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to the courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, *that a discrimination reflects no policy, but simply arbitrary and capricious action.*"

Id. at 226 (emphasis supplied). The persistent theme that runs throughout the Supreme Court's pronouncements is that justiciability is not to be equated with invalidation. It is, rather, the absence of constitutionally permissible justifications for deviations from precise equality that renders apportionment formulas arbitrary and capricious, and thus offensive to the Fourteenth Amendment. It is the lack of a rational basis for drawing distinctions between groups of citizens which leads to judicial imputation of the one man, one vote requirement.[12]

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[12]*See e.g.,* Avery v. Midland County, 390 U.S. 474, 484 (1968) ("The Equal Protection Clause does not, of course, require that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invidious."); Burns v. Richardson, 384 U.S. 73 (1966); Gordon v. Lance, 39 U.S.L.W. 4719 (June 7, 1971).

In *Gray v. Sanders*, 372 U.S. 368 (1963), for instance, it was the absence of any valid relationship between the unit system as employed in the Electoral College and the similar utilization of a unit system in county primaries which compelled the conclusion that the resulting discrimination could only be arbitrary and invidious. Similarly, in *Reynolds v. Sims*, 377 U.S. 533, 571-77 (1964), the Court found that in developing standards for state legislative apportionment the analogy to federal Congressional apportionment was inapposite. The Court there further concluded that the two alternate schemes proposed to the three-judge District Court by the Alabama Legislature were "completely lacking in rationality." *Id.* at 568.

The lesson of these cases was restated in *Swann v. Adams*, 385 U.S. 440, 444 (1967). It was there again held that deviations from equality of voting power may be permissible, but only if they reflect legitimate considerations incident to the effectuation of some rational policy. This principle was most recently applied in *Abate v. Mundt*, 39 U.S.L.W. 4663 (June 7, 1971), where a deviation, from the mathematical norm, of twelve percent in the plan for election of county supervisors was approved. The plan found its legitimation in the locality's interest in preserving the integrity of its political subdivisions and in the need for "close cooperation between the county and its constituent towns." *Id.* at 4665.

The principle which renders the questions raised in this litigation justiciable is that courts are competent to scrutinize the allocation schemes promulgated by the national parties in order to determine whether, given the context of political partisanship out of which such formulas necessarily arise, substantial deviations from equality of

voting power at the Conventions are supported by legitimate justifications.[13] We do not underestimate the difficulty of the task. Neither do we think, however, that in light of conventional Fourteenth Amendment analysis, coupled with a full awareness of the important roles played by voluntary political parties in our system of self-government, the courts will be left to face that task in a standardless vacuum.

IV

Appellants contend that the crucial starting point for this court in its evaluation of the apportionment schemes is to determine whether those schemes are compatible with a population-based one man, one vote test. More precisely, appellants postulate that, insofar as practicable, each delegate to his party's National Convention must be representative of an equal segment of the national population and that any deviation *from that test* must be fully justified.

For example, according to their theory, since the States of Arizona and West Virginia are of approximately equal population,[14] they must be allowed to send equal numbers of voting delegates to the National Conventions. Under appellants' formula each of those two States would send

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[13]Consistent with the courts' long tradition of vigilance in "scrutinizing schemes allegedly conceived or operated as purposeful devices to further racial discrimination," any delegate-allocation formula found to constitute invidious discrimination in terms of such factors as race, religion, sex, or economic status would be subject to judicial invalidation. *See e.g.,* Whitcomb v. Chavis, 39 U.S.L.W. 4666, 4673 (June 7, 1971).

[14]According to 1970 Census figures submitted by appellants, Arizona has a population of 1,772,482 and West Virginia has 1,744,237.

26 delegates to the National Democratic Convention. Each State would also send an undetermined but equal number of delegates to the Republican Convention. Every state would, therefore, have proportionally the same delegate strength at each Party's Convention. Long-standing local disparities in party strength would no longer be relevant in determining a state party's voice in its national party.

Appellants' thesis is unacceptable. Even assuming a complete absence of recognizable justifications in the parties' present allocation formulas for deviations from a rule of *equal representation*—an assumption we make only for purposes of the instant discussion and without intimating any view whatsoever as to whether such justifications have or have not been shown—the imposition of a population-based criterion would constitute a departure from the *equal representation* standard underlying the reapportionment cases. While population may be an appropriate measuring rod when public officials are to be elected and held responsible to the entire citizenry,[15] population alone is an inappropriate test of representation in the framework of national politics where parties compete for membership. Although both major parties are constantly striving to garner a greater share of the voting population's support, neither has yet been so successful as to permit it to claim representation of the entire population. The constituency of each party is significantly smaller than the whole of the eligible electorate, and varies dramatically from state to state and from

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[15] *See, e.g.*, Burns v. Richardson, 384 U.S. 73 (1966); Calderon v. City of Los Angeles, 481 P.2d 489, 93 Cal. Rptr. 361 (Sup. Ct. 1971).

election to election. For this reason it has never heretofore been thought that (with rare exceptions in one-party states) any delegate to a National Convention could fairly claim to speak for *all* the voters from his jurisdiction. Quite to the contrary, his constituency, if he may be said to represent a constituency,[16] is composed only of the voters within his state who are of like political persuasion. Indeed, responsible representation may require that a delegate vote for a candidate as his party's nominee whose views are diametrically opposed to the political persuasion of large segments of the population within the delegate's home state.

The fallacy in appellants' position lies in their misplaced reliance on cases in which local, state, or national officials were elected to perform governmental functions on behalf of the entire electorate in a particular locale.[17] In the political party context, however, the primary function performed by a delegate to a National Convention is to participate in a process leading to the designation of a candidate for national office—a prerogative he exercises on behalf of only a portion of the total local population. Appellants' argument is reminiscent of Mr.

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[16]*See* Reynolds v. Sims, 377 U.S. 533, 563 (1964) (legislative districting scheme which "gives the same number of representatives to unequal numbers of *constituents*" offends standards of Equal Protection) (emphasis supplied).

[17]It would seem that Mr. Justice Black's *caveat* in Hadley v. Junior College District, 397 U.S. 50, 56 (1970), bears directly on this problem:

> "It is of course possible that there might be some case in which a State elects certain functionaries whose duties . . . *so disproportionately affect different groups* that a popular election . . . might not be required." (Emphasis supplied).

Chief Justice Warren's dialogue in *Reynolds v. Sims*, 377 U.S. 533, 562-63 (1964), emphasizing by way of parody that "[l]egislators represent people, not trees or acres," and that overrepresentation and underrepresentation are the products of a failure to assure that equal numbers of constituents select equal numbers of representatives. It should be too plain to admit of serious doubt that a population index imposed as the sole criterion on Democratic Party delegate selections would lead, on the one hand, to overrepresentation of Democrats residing in states in which the voters are of a heavily Republican persuasion. Likewise it would lead, on the other hand, to underrepresentation of Democrats in the predominantly Democratic states. Such results are the *inescapable consequence of* using state population statistics as the sole basis for allocating Convention seats among the state parties.[18]

In light of this fatal flaw in appellants' attack, and because of the disproportionate emphasis it has placed on issues other than whether the parties' apportionment schemes are fair and rational, we deem this case an inappropriate vehicle for further scrutiny of those formulas. Other suits presently pending[19] or yet to be brought may provide the occasion for resolving these matters we find unnecessary to our decision in this case. We do not now anticipate the results properly to be reached on such

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[18]*See* Goldstein, *One Man, One Vote and the Political Convention*, 40 U. CIN. L. REV. 1, 29-30 (1971). Insofar as dictum in Maxey v. Washington State Democratic Comm., *supra* note 7, intimates that "total population" alone could be consistent with a requirement of equal representation to a state party convention in a two-party state, we disagree.

[19]*See* text at pages 4, 5, 6 *supra*. [Pages 6, 7, 8 herein]

occasions, since we deal here only with the precise claim advanced by appellants. By the same token, we do not now assert that population may never be an appropriate factor in party convention delegate-allocation. We hold only that, in addition to our conclusions as to state action and justiciability; population alone cannot be the touchstone of the one man, one vote rule as that rule is sought to be applied in the case before us.

The judgment of the District Court is

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 71-1018

THE STATE OF GEORGIA, ET AL., APPELLANTS

v.

THE NATIONAL DEMOCRATIC PARTY, ET AL.

SEPTEMBER TERM, 1970
CIVIL 882-70.

Appeal from the United States District Court for the District of Columbia.

Before: McGOWAN, TAMM and ROBB, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration thereof it is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam
For the Court:

/s/ NATHAN J. PAULSON

NATHAN J. PAULSON
Clerk

Dated: July 23, 1971.
Opinion per curiam.

1968 DEMOCRATIC PARTY APPORTIONMENT FORMULA

Resolved That the distribution of votes, delegates and alternates from the various States and territories to the Democratic National Convention to be held in Chicago on the twenty-sixth day of August, 1968, be as follows:

(1) Each State shall have three (3) Convention votes for each of the Electors from that State in the Electoral College.

(2) Each State shall have a popular vote bonus equal to one Convention vote for each 100,000 popular votes, or major fraction thereof, cast in that State in 1964 for Electors who either voted for the nominees of the 1964 Democratic National Convention or who were not elected but ran on the ticket of voting for said nominees: *Provided*, That (i) there shall be a minimum of one such bonus vote for each State.

(3) There shall be a victory bonus of ten (10) Convention votes for each State which cast its Electoral

votes for the nominees of the 1964 Democratic National Convention.

(4) Each member of the Democratic National Committee elected by the 1964 Democratic National Convention or subsequent thereto by the Democratic National Committee shall have one Convention vote, said vote to be personal and to be incapable of exercise by any alternate.

(5) Canal Zone, Guam, Puerto Rico and the Virgin Islands shall have twenty-three (23) Convention votes, inclusive of the votes of members of the Democratic National Committee, distributed as follows:

Canal Zone	5
Guam	5
Puerto Rico	8
Virgin Islands	5

1968 REPUBLICAN PARTY APPORTIONMENT FORMULA

RULE NO. 30

The membership of the next National Convention shall consist of: —

A. Delegates at Large

1. Four Delegates at Large from each State.

2. Two additional Delegates at Large for each Representative at Large in Congress from each State.

3. Nine Delegates at Large for the District of Columbia and three additional Delegates at Large for the District of Columbia if it casts its electoral vote, or a majority thereof, for the Republican Nominee for President in the last preceding Presidential election.

4. Six additional Delegates at Large from each State casting its electoral vote, or a majority thereof, for the Republican Nominee for President in the last preceding Presidential election. If any State does not cast its electoral vote, or a majority thereof, for the Republican Nominee in the last preceding Presidential election, but at that election or at a subsequent election held prior to the next Republican National Convention elects a Republican United States Senator or a Republican Governor then in such event such State shall be entitled to such additional Delegates at Large.

5. Five Delegates at Large for Puerto Rico and three Delegates at Large for the Virgin Islands.

B. District Delegates

1. One District Delegate from each Congressional District casting two thousand (2,000) votes or more for the Republican Nominee for President or for any elector pledged to vote for the Republican Nominee for President in the last preceding Presidential election, or for the Republican Nominee for Congress in the last preceding Congressional election.

2. One additional District Delegate for each Congressional District casting ten thousand (10,000) votes or more for the Republican Nominee for President or for any elector pledged to vote for the Republican Nominee for President in the last preceding Presidential election, or for the Republican Nominee for Congress in the last preceding Congressional election.

1972 DEMOCRATIC PARTY APPORTIONMENT FORMULA

BE IT RESOLVED by the Democratic National Committee that the distribution of votes, delegates and alter-

nates to the 1972 Democratic National Convention shall be in accordance with the following:

(1) The total number of Convention votes for the delegates to the Convention shall be 3016 as set forth in the compilation included in this resolution and determined as provided in paragraphs (2), (3) and (5) hereof.

(2) Each State and the District of Columbia shall receive three Convention votes for each of the Electors from that State or the District of Columbia in the Electoral College.

(3) Each State and the District of Columbia shall receive such additional Convention votes as are determined by distributing 1386 Convention votes among the States and the District of Columbia based upon the relationship between (i) in the case of each State other than Alabama, one-third of the number of votes cast in such State in favor of the Presidential and Vice Presidential nominees of the Democratic Party in the 1960, 1964 and 1968 elections and, in the case of Alabama, one-half of the number of such votes cast in the 1960 and 1968 elections, and, in the case of the District of Columbia, one-half of the number of such votes cast in the 1964 and 1968 elections and (ii) one-third of the total number of votes cast in all States other than Alabama in favor of the Presidential and Vice Presidential nominees of the Democratic Party in the 1960, 1964 and 1968 elections plus one and one-half times the total number of such votes cast in Alabama in the 1960 and 1968 elections and in the District of Columbia in the 1964 and 1968 elections.

(4) Each State or the District of Columbia that re-

ceives less than 20 Convention votes pursuant to paragraphs (2) and (3) hereof may select 20 voting delegates to the Convention to cast the total Convention votes received by the State pursuant to paragraphs (2) and (3) hereof.

(5) Canal Zone, Guam, Puerto Rico and Virgin Islands shall have 16 Convention votes, distributed as follows:

Canal Zone	3
Guam	3
Puerto Rico	7
Virgin Islands	3

Canal Zone, Guam and Virgin Islands each may select 6 voting delegates, and Puerto Rico may select 14 voting delegates, to cast the total Convention votes received by each pursuant to this paragraph (5).

(6) Each State, the District of Columbia, Canal Zone, Guam, Puerto Rico and Virgin Islands, in accordance with procedures consistent with the "full, meaningful and timely opportunity" mandate of the 1968 Democratic National Convention, shall select during the calendar year 1972 a nominee to serve as national committeeman and a nominee to serve as national committeewoman beginning upon their confirmation by the 1972 Democratic National Convention, which nominees shall serve as voting delegates to the 1972 Democratic National Convention and whose votes or fractions thereof shall be counted as a part of the total number of Convention votes received pursuant to paragraphs (2), (3) and (5) hereof by such State, the District of Columbia, Canal Zone, Guam, Puerto Rico or Virgin Islands.

(7) Each State, the District of Columbia, Canal

Zone, Guam, Puerto Rico, and Virgin Islands may select a number of alternates equivalent to the sum of (i) one alternate for each of the first 20 Convention votes received by it pursuant to paragraphs (2), (3) and (5) hereof, (ii) one alternate for each two Convention votes in excess of 20 but less than 101 Convention votes received by it pursuant to paragraphs (2), (3) and (5) hereof, and (iii) one alternate for each three Convention votes in excess of 100 Convention votes received by it pursuant to paragraphs (2), (3) and (5) hereof.

(8) Any person serving as national committeeman or national committeewoman of the Democratic National Committee as of the time the Convention convenes in 1972, who is not otherwise serving as a voting delegate to the Convention, shall be entitled to serve as a delegate to the Convention, with full rights and privileges of a delegate on matters coming before the Convention.

1972 REPUBLICAN PARTY APPORTIONMENT FORMULA

RULE NO. 30

The membership of the next National Convention shall consist of:

A. DELEGATES AT LARGE

1. Four (4) Delegates at Large from each of the fifty (50) States.

2. Two (2) additional Delegates at Large for each Representative at Large in Congress from each State.

3. Nine (9) Delegates at Large for the District of Columbia and three (3) additional Delegates at Large

for the District of Columbia if it casts its electoral vote, or a majority thereof, for the Republican Nominee for President in the last preceding Presidential election.

4. Six (6) additional Delegates at Large from each State casting its electoral vote, or a majority thereof, for the Republican nominee for President in the last preceding Presidential election. If any State does not cast its electoral vote or a majority thereof for the Republican nominee in the last preceding Presidential election, but at that election or at a subsequent election held prior to the next Republican National Convention elects a Republican United States Senator or a Republican Governor or a Republican majority of the State's membership in the United States House of Representatives then in such event such State shall be entitled to such additional Delegates at Large.

5. Five (5) Delegates at Large for Puerto Rico, and three (3) Delegates at Large for the Virgin Islands, and three (3) Delegates at Large for Guam.

B. DISTRICT DELEGATES

1. One (1) District Delegate from each Congressional District casting four thousand (4,000) votes or more for the Republican nominee for President or for any elector pledged to vote for the Republican nominee for President in the last preceding Presidential election, or for the Republican nominee for Congress in the last preceding Congressional election.

2. One (1) additional District Delegate for each Congressional District casting twelve thousand five hundred (12,500) votes or more for the Republican nom-

inee for President or for any elector pledged to vote for the Republican nominee for President in the last preceding Presidential election, or for the Republican nominee for Congress in the last preceding Congressional election.

C. ALTERNATE DELEGATES

One (1) Alternate Delegate to each Delegate to the National Convention.

CERTIFICATE OF SERVICE

I, Harold N. Hill, Jr., Executive Assistant Attorney General of the State of Georgia, attorney for Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the_____ day of_____, 1971, I served the within and foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit upon the Respondents, by mailing true copies thereof in duly addressed envelopes with first class postage prepaid to their counsel of record, as follows:

Joseph A. Califano, Jr., Esquire, Williams, Connolly & Califano, 839 17th Street, N.W., Washington, D. C. 20006, attorney for the National Democratic Party, the Democratic National Committee, Channing E. Phillips and Miss Flaxie Pinkett;

Fred C. Scribner, Jr., Esquire, Pierce, Atwood, Scribner, Allen & McKusick, 465 Congress Street, Portland, Maine 04111, attorney for the National Republican Party, the Republican National Committee, and Mrs. J. Willard Marriott;

Shipley, Akerman, Pickett, Stein & Kaps, 1108 National Press Building, Washington, D. C. 20004, attorneys for Carl L. Shipley, Esquire.

I further certify that all parties required to be served have been served, with the required number of copies.

HAROLD N. HILL, JR.
Executive Assistant
Attorney General
Of Counsel for Petitioners